

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 10,877

IN THE MATTER OF:

Served November 2, 2007

Application of VEOLIA TRANSPORTATION)
SERVICES, INC., to Merge with)
YELLOW BUS SERVICE, INC., Trading)
as YELLOW TRANSPORTATION, WMATC)
No. 280)

Case No. AP-2007-001

Application of VEOLIA TRANSPORTATION)
ON DEMAND, INC., to Acquire Control)
of WASHINGTON SHUTTLE, INC.,)
Trading as SUPERSHUTTLE, WMATC)
No. 369)

Case No. AP-2007-006

This matter is before the Commission on the response of applicant Veolia Transportation Services, Inc., (VTS), to Order No. 10,445, served May 3, 2007, concerning the production of certain contracts for passenger transportation in the Metropolitan District.

This proceeding is governed by Article XII, Section 3, of the Compact regarding carrier mergers and acquisitions.¹ The Commission may approve an application under Article XII, Section 3, if it finds that the proposed transaction is consistent with the public interest.²

The public interest analysis focuses on the fitness of the acquiring party, the resulting competitive balance, and the interest of affected employees.³ The primary concern when assessing the effect of a transfer on competition is whether the transfer will increase the acquiring party's market share.⁴ We cannot make a market share assessment in this case without considering all of applicants' relevant passenger carrier contracts. We cannot determine which of applicants' passenger carrier contracts are relevant without seeing all of applicants' contracts for passenger service in the Metropolitan District. Applicants have produced some but not all such contracts.

Prior to Order No. 10,445, VTS produced four of nine contracts that in VTS's own words had "potential impact under the WMATC

¹ Order No. 10,445.

² Compact, tit. II, art. XII, § 3(c).

³ Order No. 10,445.

⁴ *In re Crown Charters & Tours, LLC, & Southern Comfort Lines, Inc.*, No. AP-05-205, Order No. 9471 (Apr. 13, 2006); *In re Transportation Centers, Inc., & Fairfax Coach Lines, Inc.*, No. AP-05-116, Order No. 9308 (Feb. 8, 2006).

jurisdiction."⁵ Eight were identified. One was not. The eight include:

- King Farm Shuttle
- Prince George's County
- AHRQ Redland Tech Center
- Military Defense Agency
- Georgetown Metro Connection
- Fairfax County
- Loudoun County
- Arlington County

VTS produced copies of the first four. VTS did not produce a copy of the Georgetown Metro Connection contract because one was not available at the time. The other three - Fairfax, Loudoun, and Arlington - were not produced because VTS believes they are not subject to WMATC jurisdiction pursuant to the exclusion for transportation solely within Virginia under Article XI, Section 3(g), of the Compact. But that is for the Commission to decide, not VTS.

Accordingly, Order No. 10,445 directed applicants to produce the following documents:

- To the extent not already on file with the Commission, a copy of each contract for transportation in the Metropolitan District held by either applicant and each such contract held by any carrier or person controlling, controlled by, or under common control with either applicant; and
- A statement identifying on a contract-by-contract basis the number of vehicles operated under each such contract.

Because of the commercial sensitivity of the information in those contracts, the order stated that applicants could redact all pricing information.

VTS responds, once again, that it believes it has produced "all current contracts subject to WMATC jurisdiction." But the order directed applicants to produce "each contract for transportation in the Metropolitan District" so that the Commission may determine whether VTS's assertion is correct.

Applicants are directed again to produce all contracts for service in the Metropolitan District not already produced, including the as yet to be identified ninth contract and any other Metropolitan District contract not already identified. Applicants also shall state the number and type of vehicles required to perform each contract produced pursuant to this order so that the Commission may carry out its approval mandate under the Compact.

⁵ Letter of March 16, 2007, filed March 19, 2007.

Except for the Georgetown Metro Connection contract, applicants may redact all portions of each contract produced pursuant to this order except route descriptions, operations management provisions, insurance and indemnification terms, and vehicle information.


THEREFORE, IT IS ORDERED:

1. That applicants shall produce the following documents within thirty days of the date of this order:

- a. To the extent not already on file with the Commission, a copy of each contract for transportation in the Metropolitan District held by either applicant and each such contract held by any carrier or person controlling, controlled by, or under common control with either applicant, including the so-called "ninth contract" and any other Metropolitan District contract not already identified; provided that, applicants may redact all portions of said contracts except route descriptions, operations management provisions, insurance and indemnification terms, and vehicle information; and
- b. A statement identifying on a contract-by-contract basis the number of vehicles operated under each transportation contract required to be produced pursuant to this order.

2. That applicants may not redact the Georgetown Metro Connection contract.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director